*IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : April 4, 2007.
% Date of Decision : April 27, 2007

+ WP(C) 12752/2006 & CM No. 9839/2006

SANTOSH BHAT ..... Petitioner.
! Through Mr.R.K. Saini, Advocate.

versus

$ DELHI DEVELOPMENT AUTHORITY ..... Respondent.
^ Through Ms. Amrit K. Oberoi, Advocate

CORAM :-

* **HON'BLE DR. JUSTICE S. MURALIDHAR**

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J.

1. The petitioner seeks the quashing of a letter dated 8.8.2005 issued by the respondent Delhi Development Authority ('DDA') by which the petitioner was informed that her request for allotment of a flat with waiver of interest could be considered only if she gave

consent for getting it at old cost plus interest plus restoration charges or current cost whichever is higher. It also challenges a the demand letter dated 16.3.2006 calling upon her to pay the old cost plus interest plus restoration charges in the sum of Rs. 25,50,407, for the allotment of the flat in question.

Background Facts

2. The facts leading to the filing of the petition are that the petitioner was registered with the DDA under its Self Finance Scheme 1982 ('SFS'). Initially the registration was in the name of the petitioner's brother. In the draw held pursuant to the applications invited in the month of October-November 1987, the allotment did not mature. Thereafter in 1990, the DDA offered flats in various localities including Sarita Vihar.

3. The petitioner states that due to disturbances in Kashmir, she was forced to shift to Delhi along with her family members. On 30.5.1991 she applied to the DDA for transferring the registration in her name. She was informed on 9.8.1991 that the registration stood transferred in her name.

4. Towards the end of December, 1992 the DDA announced a scheme offering ready built flats in Sarita Vihar. On 8.1.1993 the petitioner applied for allotment of a flat under this scheme. A draw of

lots was held on 23.3.1993. By a letter dated 26.3.1993/31.3.1993 the DDA informed the petitioner that she has been allotted a ready built flat in Sarita Vihar in Pocket E, IIIrd floor under Category II and the net amount payable by the petitioner was Rs.6,19,960.

5. Contending that the flat in question was a left out flat from earlier schemes which was offered to Rs.2.65 lacs and that the DDA was not justified in demand a sum of Rs.6.40 lacs, the petitioner challenged this demand by filing Writ Petition (C) No. 2995 of 1993 in this Court. The prayer in the petition was for a direction that the DDA was not entitled to charge "anything more than actual costs of construction, or at least the price in which the flats were allotted to the allottees in the neighbourhood."

6. The said writ petition was disposed of on 20.7.2004, i.e. 11 years after the writ petition was filed. The court noted the submission of learned counsel for the petitioner that "she has instructions not to press the writ petition on merits provided directions are issued to the DDA not to charge interest from the petitioner." In para 10 of the judgment the Court observed that "since counsel for the petitioner did not press the petition on merits, I need not adjudicate on the claim of the petitioner. The writ petition is accordingly dismissed." The court was not inclined to entertain the plea for waiver of interest. Accordingly, the Court concluded the judgment as under:

> "Since counsel for the petitioner made a request that interest be waived, which request has been declined by me, I clarify that this would not preclude the competent authority to sympathetically consider,on the administrative side, request if any made by the petitioner to waive interest on charge interest at a lesser rate."

7. On the very date of the above judgment, i.e., 20.7.2004, the petitioner wrote to the DDA seeking waiver of interest. She sent reminders on 28.3.2005, 28.5.2005 and 15.6.2005. Thereafter, she received the first impugned letter dated 8.8.2005 stating that her request would be considered only she agreed to pay old cost plus interest plus restoration charges or current cost whichever is higher. She replied on 18.8.2005 agreeing to this request.

8. Nevertheless, the petitioner then kept writing to the DDA reiterating her request for waiver of interest. On 16.3.2006 the petitioner was issued the second impugned letter acceding to her request for restoration of flat No. 238, Pocket-E, Sarita Vihar subject to her making payment of Rs.28,50,407 up to 31.5.2006. The letter also indicated the increased amounts if payment was made beyond 31.5.2006 and up to 31.8.2006. The letter stated that if the payment was not made by 31.8.2006, the allotment would stand automatically cancelled.

9. Since the above amount included the interest amount, the

petitioner protested against the said demand by letters dated 4.4.2006 and 21.7.2006. Thereafter, she filed the present writ petition. By an order dated 28.8.2006 this Court, while directing the notice to issue to the DDA, restrained the DDA from cancelling the allotment subject to the petitioner depositing a sum of Rs.17 lakhs.

10. The case of the respondent in its counter affidavit is that the Court had already rejected the petitioner's demand for waiver of interest by the order dated 20.7.2004. The demand for amounts stated in the allotment letter dated 16.3.2006 was justified with reference to the costing policy of the DDA. Essentially on the original cost of Rs.6,40 less registration money which worked out the Rs.6,19,960, the DDA has charged interest for the 13 year's period from 1.6.1993 to 31.5.2006. It also included the restoration charges of Rs.20,000.

Submissions of counsel

11. The submission of Shri R.K. Saini, learned counsel appearing for the petitioner is that in declining to exercise its discretion to waive the interest, the DDA has acted arbitrarily. He states that even if the petitioner's writ petition had earlier been dismissed and the question of waiver of interest had been left to the DDA, it did not mean that the DDA should be permitted to earn disproportionate profit to the extent of Rs.11.50 lakhs. He relies upon the judgment dated

19.9.2005 of this Court in Writ Petition (C) No. 12517 of 2005 (***S.R. Yadav v. Delhi Development Authority***) to contend that interest @ 9% was a reasonable rate to be charged. He refers to the judgment dated 29.1.2002 passed by the Division Bench in LPA No 144 of 1998 (***Inder Jeet Vij v. Delhi Development Authority***). He submits that keeping in mind the cost that the State would fetch in the event of the cancellation of allotment, and if it was allotted to some other person, the DDA could charge higher than the current cost. Mr. Saini states that the noting expressed in the Office Order dated 19.4.2002 to the effect that "if the cancellation took place because the allottee's fault and if the flat is in South Delhi area, restoration would be on the basis of old cost plus interest or current cost, whichever is higher," ought not to apply since in the instant case the policy that was applied was that expressed in the Office Order dated 1.6.2000. Referring to the notes on file, he points out that in respect of similar case of Smt. Manorama Batra, interest has been charged @ 8% and keeping in view of the she was a widow, 50% of the penal interest was waived on compassionate grounds. Finally, he submits that the petitioner should not be made to pay interest even for the period when the DDA delayed taking a final decision in the matter.

12. Ms. Amrit Kaur Oberoi, learned counsel for the respondent DDA has relied upon the decisions of the Hon'ble Supreme Court in ***Bareilly Development Authority v. Ajay Pal Singh*** JT 1989 (1) SC

368, a Full Bench decision of this Court in ***Sheelawanti v. Delhi Development Authority*** 57 (1995) DLT 801(FB) and ***Delhi Development Authority v. Ashok Kumar Behl*** to contend that in the matter of pricing of flats, the Court will generally did not interfere unless the pricing will be arbitrary. In ***Sheelawanti*** (supra) it was observed that "merely because the method of valuation suggested by the petitioners would be more fairer or logical, the method or the basis adopted by the DDA cannot be struck down as arbitrary or whimsical." She relied on the policy dated 19.4.2002 which states that where the cancellation takes place because of the allottee's fault and if the flat is in South Delhi area, restoration will be done on the basis of "old cost plus interest or current cost which ever is higher." The contention of the DDA is that since there is no challenge to the policy dated 19.4.2002, and since the flat is in South Delhi the restoration has to be on the old cost plus interest which is higher than the current cost.

DDA's consideration of the petitioner's case

13. Thanks to the Right to Information Act, 2005, the petitioner has been able to obtain and place on record the entire file of the DDA in relation to her case. This gives the complete sequence of notes on the file of the DDA which deal with the petitioner's request. An internal note of 19.11.2004 of the DDA, in the petitioner's file, states that "in case the payment of demanded amount is made latest by 31.12.2004,

the amount of interest against delayed payment would be Rs.12,89,517 (for 139 months). In addition to this, the restoration charges of Rs.20,000 would become payable and the total amount would be Rs.19,29,477." In the same note, it was noticed that disposal price of the flat proposed to be allotted to the petitioner was Rs.15,61,625. In para 6 of the note, it is stated as under:

> "If the cost demanded in March 2003 under HIG scheme is considered, there would be financial implication of Rs.9.41 lacs. If on the other hand, the cost plus interest as worked out in para 5 above is considered, the financial implication would work out to Rs.13,09,000"

It is stated thereafter that:

> "In view of the above details, waiver of interest is not feasible and also not in the interest of Department as the capital investment of Rs.6.20 lacs is blocked from March, 1993 and we have been maintaining the flat for about 12 years and incurring expenditure on watch and ware of the flat. So far as the question of charging interest at reduced rates is concerned, Management Wing may submit the case to competent authority keeping in view the fact that the delay is entirely attributable to the allottee who litigated matter."

14. Thereafter in a note prepared on 22.12.2004 the current cost was worked out at Rs.15,75,576, and the old cost plus interest was worked out as Rs.23,57,872. It was opined that given the prevalent policy, the latter figure which was higher would have to be charged. It was nevertheless noticed that since the question of reduction of

interest rate would have to be considered by the Competent Authority, the file should be submitted to the Vice Chairman.

15. In the next note dated 10.1.2005 by the Dealing Assistant, it was reiterated that since the flat costing Rs.6.20 lakhs had been blocked from March 1993, and it had to be maintained for about 12 years by incurring expenditure on watch and ward, the question of charging interest at reduced rates would not be feasible.

16. More notes on file followed through March and April, 2005. Queries raised resulted in the file travelling back and far. In a noting dated 30.4.2005 it was observed as under:

> "the Flat No. E-238 was not put to the draw held on 28.1.2005 under Festival Housing Scheme 2004 because no decision about cancellation of the flat has been taken by the competent authority so that the said flat was not considered for allotment under Festival Housing 2004.
>
> Now it is under consideration and order whether:-
>
> 1. To treat the flat cancelled and informed to the allottee to apply for refund of the registration money or
>
> 2. Flat be offered at old rate + interest as the current cost comes to Rs.15,75,600 while old cost + interest charges comes to Rs.23,57,872 as per report of Finance Wing at pages 13-14/N + restoration charges.
>
> Submitted for appropriate orders please."

It thus appears that the DDA itself was not clear whether the flat

already stood cancelled as per the court's order. A decision was taken on 3.5.2005 that it should be treated as having been cancelled.

17. The file notes that acknowledge that on 15.6.2005 the petitioner did write to the Vice Chairman, DDA stating that she was a Kashmiri migrant widow and that her husband who was a social worker and journalist had died on 10.2.2005 due to cancer and that she had no means of livelihood. Thereafter a query was raised about the "genuineness" of the petitioner. This was confirmed on 20.9.2005. Finally, on 2.2.2006, the Vice Chairman placed the file before the Lt. Governor with the following note:

> "LG may kindly see the notes on pre-pages. In this case, the matter remained sub-judice for a period of more than 11 years and was finally disposed of on 20.7.2004. Hon'ble Court has left it to the Competent Authority for waiver of interest or to charge on lesser side. Keeping in view the fact that the applicant is a migrant and her husband died on 10.2.2005 due to cancer, a sympathetic view may be taken for the allotment of flat to her in accordance with the policy placed opposite.
>
> Since the matter remained sub-judice for more than 11 years and even thereafter, there is a delay or approximately 1-1/2 years, therefore, considering the total delay, the restoration may kindly be approved."

The above noting was simply signed by the Lt. Governor on 7.2.2006,

indicating that the proposal of the Vice-Chairman was accepted.

18. It appears from the above note that the Vice Chairman accepted the recommendation made by the subordinate officers that the policy of 19.4.2002 should be followed and interest should not be waived. Thereafter, more notings followed and the second impugned letter dated 16.3.2006 was issued charging interest up to 31.5.2006 and the total cost demanded was Rs.28,50,407.

19. The matter did not stop there. The notes indicate that the Vice Chairman was again met by the petitioner on 5.4.2006 and it appears that the Vice Chairman was still willing to reconsider her case for waiver of interest. Certain queries appear to have been raised on 19.5.2006 whether there was any earlier case where interest in full or in part had been waived. The Vice Chairman then asked whether in the petitioner's case also a similar decision could be taken. Afterwards, the file was again placed before the Vice Chairman who on 18.7.2006 took the following decision:

> "Keeping in view the peculiar circumstances, the restoration was sympathetically considered in this case. However, the issue of waiver of interest as requested, if considered, would be a departure from the present practice and would certainly invite other similarly persons to come forward. In these circumstances, the request of the allottee for the waiver of interest cannot be acceded to. She may be informed accordingly.

(Dinesh Rai)
Vice Chairman
18.7.2006”

Is the decision of the VC arbitrary?

20. There could be no doubt in the present case, the figure of old cost plus interest is higher than the current cost of the flat. It is true that this is a matter of policy of the DDA contained in its letter dated 19.4.2002 that has not been challenged per se. Further, the counsel for the respondent is right in contending that when this Court was earlier asked to direct DDA to waive interest, it declined, leaving the decision entirely to the DDA. The scope of the present petition is therefore narrower than what is projected by the petitioner. On a perusal of the notes on file, this Court is nor prepared to hold that the DDA has acted arbitrarily in declining the prayer of the petitioner for waiver of interest. The matter has indeed received careful consideration at several levels before the final decision was taken. The explanation for not extending to the petitioner (who it must be remembered, filed in her writ petition before this Court) the benefit extended to Mrs. Manorama Batra cannot be termed as either unreasonable or arbitrary.

Interest for the Period of Delay

21. The only aspect that Court is prepared to consider is whether the DDA took an unconscionably long time in the present matter to

come to a definite conclusion that it would not be waiving interest and then charging interest even for the period of protracted consideration. It must be recalled that this Court dismissed the writ petition on 20.7.2004 and on the very date, the petitioner wrote to the DDA for waiver of interest. The notes on file indicates that the matter remained sub-judice in Court for more than 11 years during which time cancellation was stayed. As the note at page 38, indicates that "in view of the disposal of writ petition on 20.7.2004, the power to restore the allotment vests in VC, DDA as the delay is not more than three years from the date of judgment. Hence, restoration could be allowed waiver of interest or give directions to charge interest at the reduced rate." The other factor was that the old cost plus interest up to 31.12.2004 was worked out by the Finance Wing to the extent of Rs.23.57 lacs while the current cost at that time was Rs.15.75 lacs. The rate of interest applied on the old cost was 18% per annum (simple) upto 31.8.2002 and 15% compound thereafter.

22. The amount already having worked out on 19.11.2004 itself, the delay thereafter in finalizing the matter appears to be that of the DDA entirely. Even applying the policy dated 19.4.2002 of the DDA, which has not been challenged, the petitioner can justifiably be asked to pay interest only till 31.12.2004. This should be considered to be the reasonable time by which the DDA was required to take a decision on the request of the petitioner. However, the petitioner was completely

kept in dark about the decision being taken on her request. The file kept moving up and down for over two years. There appears to have been a confusion as to whether the allotment had in fact been cancelled. At one stage it appears that the matter was considered only under the policy dated 1.6.2000. It was felt that the powers were with the VC, DDA as the competent authority to grant the approval of waiver of interest. However, a query was suddenly raised about the petitioner's "genuineness". Even after it was confirmed, the file kept travelling from one desk to another, without considering the request for waiver of interest. The query raised by the Commissioner (Housing) whether in any other similar case, waiver of interest has been granted was only on 19.5.2006, two months after the demand-cum-allotment letter was issued on 16.3.2006. Thus, when the file was placed by the Vice Chairman before the Lt. Governor on 2.2.2006 for approval, the question whether the petitioner could be treated on par with Smt. Manorama Batra was not even considered. This happened five months later when the file again reached the Vice Chairman on 18.7.2006, when he took a decision that the petitioner's "request cannot be acceded to."

23. The notes on file indicate that the earlier orders of this Court directing the petitioner to move the competent authority to consider the question of waiver of interest actually did not receive consideration at the hands of the competent authority till 18.7.2006.

The notes on file show that this delay beyond the date of the judgment till 18.7.2006 was entirely that of the DDA's. When the impugned demand was raised on the petitioner on 16.3.2006, the issue of waiver interest had actually not been considered by the Vice Chairman or the LG.

24. Even accepting that it is entirely in the discretion of the DDA whether to waive interest or not, and that matter should be governed only by the policy dated 19.4.2002, the petitioner cannot be penalized having to pay interest for the period during which DDA delayed taking a decision. Thus, even if the Court would not like to substitute its decision for that of the DDA in not agreeing to waive interest, the Court is inclined to accept the petitioner's plea that she should not be made to pay interest for the period of the delay.

Directions

25. As already noticed, as on 22.12.2004, the old cost plus interest worked out to Rs. 23,57,872 and the current cost was Rs.15.75 lacs. Accordingly, a direction is issued to the DDA to charge the petitioner only the cost plus interest worked out on 22.12.2004, i.e. Rs.23,57,872 lacs as indicated in its worksheet prepared way back on 22.12.2004. The demand letter dated 16.3.2006 would stand modified and a fresh demand letter will be issued in the sum of Rs. 23,57,872. It is made clear that the DDA will not charge any interest

whatsoever or any amount towards the cost of flat beyond this amount.

25. The petitioner has already paid Rs.17 lakhs pursuant to the order dated 28.8.2006. The petitioner will now pay the balance amount of Rs.6,57,872 to the DDA within a period of four weeks from today and in any event not later than 27.5.2007. Upon the petitioner completing the documentation or other formalities, the petitioner will put in possession within a period of four weeks thereafter.

26. With these directions, this writ petition and the pending application stand disposed of.

S.MURALIDHAR,

J.
APRIL 27, 2007
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